

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOHN RUSSOPOULUS, 97-A-1208,

Plaintiff,

-vs-

Correction Officer CATER, Correction
Officer RYDZA, Correction Officer
LEWALSKI, and Correction Officer
JOHNSON,

Defendants.

**STATEMENT OF
UNDISPUTED FACTS**

03-CV-0249(Sc)

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56 of the Local Rules of Civil Procedure for the Western District of New York, defendants submit this statement of undisputed material facts in support of their motion for summary judgment. The only facts material to this motion are not in dispute, and are as follows:

1. Plaintiff is an inmate in the custody of the New York State Department of Correctional Services (“DOCS”) and was so at the time of the events alleged in the complaint.
2. In this action plaintiff alleges that defendants Michael Cater, Brian Rydza, Timothy Lewalski and Gary Johnson violated his constitutional rights by intentionally letting other inmates out of their cells to assault plaintiff on February 14, 2002, February 28, 2002, and March 20, 2002 while he was incarcerated at Attica Correctional Facility (“Attica”).
3. Plaintiff was housed in B-Block, Gallery 18 during the time of the events alleged in the complaint. Officer Gary Johnson did not work in the area where plaintiff was housed at the time of the events alleged in the complaint. See accompanying Declaration of Gary Johnson,

paragraphs 3-5.

4. Officer Gary Johnson is the wrong defendant in this action. Johnson Declaration, paragraph 6.

5. Plaintiff never named Sergeant Lewalski in any of his grievances or complaints in this action. *See* accompanying Declaration of Timothy Lewalski, paragraph 5.

6. Sergeant Lewalski had his regular day off on March 20, 2002. Lewalski Declaration, paragraph 3.

Dated: Buffalo, New York
May 12, 2006

ELIOT SPITZER
Attorney General of the
State of New York
Attorney for Defendants
BY:
s/ KIM S. MURPHY
KIM S. MURPHY
Assistant Attorney General
Of Counsel
Statler Towers, 4th Floor
107 Delaware Avenue
Buffalo, New York 14202-3473
(716) 853-8477
Kim.Murphy@oag.state.ny.us

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOHN RUSSOPOULUS, 97-A-1208,

Plaintiff,

-VS-

**Correction Officer CATER, Correction
Officer RYDZA, Correction Officer
LEWALSKI, and Correction Officer
JOHNSON,**

03-CV-0249A(Sc)

Defendants.

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2006, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system.

And, I hereby certify that on May 12, 2006, I mailed the foregoing, by the United States Postal Service, to the following non-CM/ECF participant, to his last known address:

John Russopoulus, 97-A-1208
Elmira Correctional Facility
P.O. Box 500
Elmira, NY 14902-0500

ELIOT SPITZER
Attorney General of the State of New York
Attorney for Defendants

BY:

s/ Kim S. Murphy
KIM S. MURPHY
Assistant Attorney General
of Counsel
NYS Office of the Attorney General
107 Delaware Avenue
Buffalo, New York 14202
(716) 853-8477
Kim. Murphy@oag.state.ny.us